

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-70889; File No. SR-CBOE-2013-108)

November 15, 2013

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amend Rule 53.23 Related to CBSX RMM Quoting Obligations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 8, 2013, Chicago Board Options Exchange, Incorporated (the “Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The “Exchange” or “CBOE” proposes to amend Rule 53.23 related to CBOE Stock Exchange, LLC (“CBSX”) Remote Market-Maker (“RMM”) quoting obligations. The text of the proposed rule change is provided below.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(additions are underlined; deletions are [bracketed])

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Chicago Board Options Exchange, Incorporated

Rules

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Rule 53.23 Obligations of CBSX Remote Market-Makers

(a) No changes.

(b) *Securities Other than those to which Appointed.* With respect to securities in which it does not hold an Appointment, a CBSX Remote Market-Maker should not engage in transactions for an account in which it has an interest which are disproportionate in relation to, or in derogation of, the performance of its obligations as specified in this Rule with respect to those securities to which it does hold an Appointment. [Whenever a CBSX Remote Market-Maker submits a two-sided quote in a security to which it is not appointed, it must fulfill the obligations established by this Rule for the rest of that trading session.]

. . . Interpretations and Policies:

.01 No changes.

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The text of the proposed rule change is also available on the Exchange's website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 53.23 related to CBSX RMM quoting obligations. A "CBSX Remote Market-Maker" or "RMM" is a CBSX Trading Permit Holder that has agreed to fulfill certain market-making obligations thus qualifying for defined benefits as set forth in the CBOE Rules.³ An RMM is an individual (either a Trading Permit Holder or nominee of a Trading Permit Holder organization) who is registered with CBSX for the purpose of making transactions as a dealer-specialist in the CBSX electronic trading system in accordance with the CBOE Rules. Registered RMMs are designated as specialists on CBSX for all purposes under the Act and the rules and regulations thereunder. RMMs may only operate in a remote capacity.⁴

³ See Rule 50.3(2). The rules in Chapters 50 through 54 of the CBOE Rules are applicable only to the trading of non-option securities on CBSX. Trading of non-option securities on CBSX is also subject to the rules in Chapters 1 through 29 of the CBOE Rules to the same extent those rules apply to the trading of the products to which those rules apply, in some cases supplemented by the rules in Chapters 50 through 54, except for rules that have been replaced by rules in Chapters 50 through 54 and except where the context otherwise requires. Appendix A to Chapters 50 through 54 lists the rules in Chapters 1 through 29 of the CBOE rules that are applicable to the trading of equity securities on CBSX. Where appropriate, Appendix A also indicates that a rule in Chapters 1 through 29 has been supplemented by a rule in Chapters 50 through 54.

⁴ See Rule 53.20.

In a manner prescribed by CBSX, an RMM may select an appointment (having the obligations of Rule 53.23) in one or more non-option securities traded on CBSX.⁵ Under Rule 53.23, RMMs must, among other things:

- enter into transactions that constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market;
- not enter into transactions or make bids or offers that are inconsistent with such a course of dealings;
- with respect to each security for which it holds an appointment, continuously engage in, to a reasonable degree under the existing circumstances, dealings for its own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, or a temporary disparity between the supply of and demand for a particular security;
- compete with other CBSX Market-Makers to improve markets;
- make markets which, absent changed market conditions, will be honored for the number of shares entered into the CBSX electronic trading system;
- engage in trading activity of which at least 75% of its total dollar amount traded on CBSX is in securities to which it has an appointment;
- with respect to securities in which an RMM does not hold an appointment, not engage in transactions for an account in which it has an interest that are

⁵ See Rule 53.22. CBSX may also appoint a RMM in one or more non-option securities trading on CBSX, giving attention to (1) the preference of registrants; (2) the maintenance and enhancement of competition among RMMs in each security; and (3) whether the financial resources available to an RMM enable it to satisfy the obligations set forth in Rule 53.23 with respect to each security in which it holds an appointment.

disproportionate in relation to, or in derogation of, the performance of its obligations with respect to those securities in which it does hold an appointment;

- satisfy RMM obligations in a security in which it does not hold an appointment whenever an RMM submits a two-sided quote in that security for the rest of the trading session; and
- comply with two-sided and minimum size obligations and pricing obligations for bids and offers.

The proposed rule change amends Rule 53.23 to eliminate the requirement that a RMM fulfill the obligations established by Rule 53.23 when it submits a two-sided quote in a security to which it is not appointed for the rest of the trading session. The Exchange believes it is an unnecessary burden to impose these obligations on RMMs with respect to securities in which they do not hold appointments because they do not receive any corresponding benefits. RMMs only qualify for defined benefits in exchange for fulfillment of market-making obligations in their appointments. The Exchange believes the elimination of an obligation with no benefit that accompanies quoting in non-appointments will incentivize RMMs to submit quotes in non-appointments, which will provide additional liquidity and enhance competition in those non-appointments. CBSX will retain the ability to appoint RMMs in order to maintain a fair and orderly market.⁶ RMMs will continue to be subject to the same obligations set forth in Rule 53.23, and receive the same defined benefits, with respect to their appointments, including the obligation to maintain continuous two-sided quotes in their appointments and contribute to the maintenance of a fair and orderly market.

⁶ CBSX also retains the authority under Rule 53.22(a) to suspend or terminate any RMM appointment if it is in the interest of a fair and orderly market.

The Exchange notes that other self-regulatory organizations with substantially similar market-maker quoting obligations do not require market-makers to fulfill those quoting obligations in securities in which they submit quotes but do not hold appointments.⁷

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.⁸ Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)⁹ requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)¹⁰ requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the proposed rule change removes impediments to a free and open market, because it will incentivize RMMs to submit quotes in non-appointments by eliminating an obligation that accompanies that quoting, which will provide additional liquidity and enhance

⁷ See, e.g., BATS Exchange, Inc. Rule 11.8; Chicago Stock Exchange, Inc. Article 16, Rule 8; and National Stock Exchange, Inc. Rule 11.8.

⁸ 15 U.S.C. 78f(b).

⁹ 15 U.S.C. 78f(b)(5).

¹⁰ Id.

competition in those securities. CBSX will still have authority to suspend or terminate RMM appointments in the interest of a fair and orderly market, including if necessary to prevent fraudulent and manipulative acts and practices and protect investors or if an RMM does not satisfy its obligations with respect to its appointments. Additionally, the Exchange notes that other self-regulatory organizations with substantially similar market-maker quoting obligations do not impose a quoting obligation on market-makers in securities in which they submit quotes but do not hold appointments.¹¹ The Exchange also notes that the proposed rule change does not result in unfair discrimination, as it applies to all RMMs.

The Exchange believes that the rules applicable to CBSX RMMs will continue to provide an appropriate balance between obligations and benefits of RMMs. The proposed rule change eliminates an obligation of RMMs that has no accompanying benefit in non-appointments. RMMs only qualify for defined benefits in exchange for fulfillment of market-making obligations in their appointments. The proposed rule change has no impact on these obligations and corresponding benefits within RMM appointments, which remain in the same balance. RMMs must still comply with the same obligations set forth in Rule 53.23 and will receive the same benefits for fulfillment of those obligations with respect to their appointments, which the Exchange believes will continue to ensure continuous, two-sided quotations in their appointments. CBSX will retain the authority to make RMM appointments in securities in the interest of a fair and orderly market. The proposed rule change only eliminates an obligation with respect to RMM non-appointments, which obligation has no corresponding benefit. The Exchange believes it is unduly burdensome to continue to impose this obligation on RMMs if they receive nothing in return for fulfillment of the obligation and further believes this obligation reduces the

¹¹ See supra note 7.

incentive of RMMs to quote in non-appointments. Thus, the proposed rule change maintains the current balance between obligations and benefits of RMMs within their appointments and eliminates the imbalance between obligations and benefits of RMMs within their non-appointments.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it provides the same relief to a group of similarly situated market participants – RMMs. The proposed rule change eliminates an obligation of RMMs that has no corresponding benefit within their non-appointments. All RMMs will be relieved of this unduly burdensome obligation but must still comply with the remaining obligations set forth in Rule 53.23 to receive the corresponding defined benefits within their appointments, which the Exchange believes will continue to ensure continuous, two-sided quotations in their appointments.

The Exchange notes that other self-regulatory organizations with substantially similar market-maker quoting obligations do not require market-makers to fulfill those quoting obligations in securities in which they submit quotes but do not hold appointments.¹² The Exchange does not believe the proposed rule change will help RMMs to the detriment of market participants on other exchanges. Rather, the Exchange believes that continuing to impose the quoting obligation that the Exchange proposes to eliminate will be detrimental to RMMs. It is unduly burdensome to require RMMs to satisfy an obligation for which they receive no benefits and to which market-makers at other exchanges with otherwise similar quoting obligations are not subject. RMMs will continue to be subject to the same obligations with respect to their appointments, which are similar to the market-making obligations within appointments imposed

¹² See supra note 7.

by other exchanges. The proposed rule change is merely eliminating an obligation with respect to RMMs non-appointments to which market-makers at other exchanges are not subject. Market participants on other exchanges are welcome to become CBSX Trading Permit Holders and trade as RMMs on CBSX if they determine that this proposed rule change has made CBSX more attractive or favorable.

CBOE believes that the proposed rule change will relieve any burden on, or otherwise promote, competition, as it will relieve RMMs of a quoting obligation that has no corresponding benefits within their non-appointments. The Exchange believes this will incentivize RMMs to submit quotes in non-appointments, which will provide additional liquidity and enhance competition in those securities.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

- A. significantly affect the protection of investors or the public interest;
- B. impose any significant burden on competition; and
- C. become operative for 30 days from the date on which it was filed, or such shorter

time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹³ and Rule 19b-4(f)(6)¹⁴ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest,

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2013-108 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2013-108. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F

Street NE, Washington DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2013-108, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁵

Kevin M. O'Neill
Deputy Secretary

¹⁵ 17 CFR 200.30-3(a)(12).